

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
SDNY PRISONER OFFICE
2016 AUG 10 AM 10:27

Ondee Nelson

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

New York City Department of
Corrections

Joseph Ponte

Max Solaine Mingo

COMPLAINT

under the

Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)

Jury Trial: ☒ Yes ☐ No
(check one)

16CV6354

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name

Ondee Nelson

ID #

895-15-016017

Current Institution

AMKC

Address

18-18 Hazen St.

East Elmhurst, N.Y. 11370

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1

Name

NYC DOC

Shield #

Where Currently Employed

The Bulyova Building

Address

75-20 Astoria Blvd.

East Elmhurst, N.Y. 11370

Defendant No. 2 Name Joseph Ponte Shield # _____
 Where Currently Employed The Bulvar Building
 Address 75-20 Astoria Blvd.
East Elmhurst, N.Y. 11370

Defendant No. 3 Name Maxoline Minao Shield # Warden
 Where Currently Employed Anna M. Kross Center
 Address 18-18 Hazen St.
East Elmhurst, N.Y. 11370

Defendant No. 4 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 5 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

- A. In what institution did the events giving rise to your claim(s) occur?
Anna M. Kross Center.
- B. Where in the institution did the events giving rise to your claim(s) occur?
My housing units.
- C. What date and approximate time did the events giving rise to your claim(s) occur?
September 29, 2015 until present day.

D. Facts:

What happened to you?

Who did what?

Was anyone else involved?

Who else saw what happened?

The NYCDoc issues the Bob Barker mattress (Prototype ID: PJM25754-1) for the prisoners to use on a foundation, when it is clearly labeled to be used without one. The NYCDoc has been made aware that this product is unsuitable and causes medical issues when mis-used, but still has made no attempt to replace them with a more suitable product. Their deliberate indifference has resulted in me suffering from severe back pain and other ailments. This violates my 8th Amendment Constitutional Right to be free from deliberate indifference.

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

Severe back pain, deprivation and loss of sleep.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

ANNA M. KROSS CENTER

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☒ Do Not Know ☐

If YES, which claim(s)? _____

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☐

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

ANNA M. KROSS CENTER

1. Which claim(s) in this complaint did you grieve? All of them

2. What was the result, if any? NONE. No response by 7/22/16.

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

NONE.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: _____

2. If you did not file a grievance but informed any officials of your claim, state who you informed, _____

when and how, and their response, if any: _____

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. _____

I filed a grievance on 7/5/16 and the facility never responded to it by 7/22/16, which is more than enough time to respond.

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. **Relief:**

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). _____

\$ 200,000.00 for pain and suffering
\$ 200,000.00 punitive damages for deliberate indifference.

and replace these mattresses with a more suitable product.

VI. **Previous lawsuits:**

On
these
claims

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☒ No ☒

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes _____ No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes _____ No ☒

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes _____ No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 22 day of July, 2016

Signature of Plaintiff

Inmate Number

Institution Address

X Oshia V Nelson
895.15.01617
AMKC
18.18 Hazen St.
East Elmhurst, N.Y.
11370

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 22 day of July, 2016 I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:

X Oshia V Nelson

WARNING

Improper cleaning and/or disinfection will shorten the life of this product.

Cleaning/Disinfection Instructions

Soils and stains: use soft sponge with neutral suds and warm water.

Hard to clean spots: use standard liquid household vinyl cleaners and soft sponge.
Pre-soak if needed.

Do Not Use

Harsh Cleaners or Solvents.

Disinfection: dilute disinfectants and/or germicides as specified on manufacturer's product label.

Use Disinfectants Only

In Those Dilutions Recommended
By the Manufacturer.

**UNDER PENALTY OF LAW THIS
TAG NOT TO BE REMOVED
EXCEPT BY THE CONSUMER**

**ALL NEW MATERIAL
Consisting of
100% THERMALLY BONDED
FIRE RESISTANT
POLYESTER STAPLE**

REG. NO. NC-769

Certification is made by the manufacturer
that the materials in this article are
described in accordance with law.

**MADE BY
BOB BARKER CO. INC
7925B PURFOY ROAD
FUQUAY-VARINA, NC 27526**

**Patent #6,807,694
MADE IN USA**

Bob Barker Company, Inc. Fuquay-Varina, NC 27526

Manufactured by:
Bob Barker Co., Inc.
7925 Purfoy Road
Fuquay-Varina, NC 27526

Date of Manufacture:

JW30754GDBL

Prototype ID: PJM25754-1

This mattress meets the requirements of
16 CFR 1633 (federal flammability (open
flame) standard for mattress sets) when
used without a foundation.

**THIS MATTRESS
IS INTENDED TO BE USED
WITHOUT A FOUNDATION**